ORIGINAL

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C

In the Matter of:	)	**MD DOCKET NO. 96-186**
	)	
Assessment and Collection of Regulatory Fees for Fiscal Year 1997	)	
	)	
	)	

To: The Commission

COMMENTS OF WRIGHT BROADCASTING SYSTEMS, INC.

WRIGHT BROADCASTING SYSTEMS, INC. ("WBS"), by Counsel and pursuant to §1.415(a) of the Rules, hereby respectfully submits these Comments in response to the Commission's *Notice of Proposed Rule Making* in the above-captioned proceeding released March 5, 1997. In support whereof, the following is shown:

Statement of Interest

1. WBS is the licensee of KWEY (AM) (1590 kHz, 1 kW-D) and KWEY-FM (Channel 247C), Weatherford, Oklahoma, and KQMX (Ch. 238C2), Clinton, Oklahoma. WBS will be materially adversely affected by the imposition of a 40% across-the-board fee increase being proposed by the Commission in the *NPRM*. Accordingly, WBS has a direct interest in the outcome of this proceeding.

2. WBS wishes to make two points with respect to the Commission's proposed regulatory fee schedule: (1) The percentage increase in regulatory fees of roughly 40% in most mass media categories is outrageous and a totally unjust apportionment of the costs of regulation to radio; (2) The failure of the Commission's fee system to address major differences in population density of radio markets served amounts to a *confiscatory tax* on small market radio, and should be rejected.

I. A 40% Increase in the Regulatory Fees for Radio Broadcasters is Unjustifiable.

3. WBS does not dispute that the Commission's operating costs have increased. While other federal agencies have been asked to cut back their staffs and budgets and to do more with less, Congress, through adoption of the *Telecommunications Act of 1996*, has imposed significant new regulatory responsibilities on the Commission, which invariably means an increase rather than a decrease in staffing and budget for Fiscal Year 1997 and beyond.

4. WBS does not dispute that radio broadcasters should be required to pay a faire share of the costs of regulation, particularly when they are the beneficiaries of those same regulations. However, when one reviews the content of the 1996 Act and the 80+ rule making proceedings initiated by the Commission, it is clear that the new regulatory machinery created by the Act and its implementation addresses regulatory issues for radio only in a small way, and deals far more extensively with other forms of media and Communications, *e.g.*, telephony, cable, wireless, satellite Communications, and digital standards for video broadcasting.

5. There is no possibility whatsoever that the Commission's cost of regulating radio broadcasting will have increased by 40% between fiscal years 1996 and 1997. Accordingly, commercial radio broadcasters are being asked to subsidize the regulatory cost of other media–forms of media whose income potential is far greater than radio broadcasting, particularly small market radio.

6. Accordingly, the proposed regulatory fees for all of radio broadcasting, large and small market alike, should be reduced to reflect a more accurate and fair share of *actual* regulatory costs.

II. A Fee System Which Makes No Provision for Market Size is Inequitable and Confiscatory

7. WBS is a small market broadcaster located in sparsely populated rural Western Oklahoma. This portion of the state has actually declined in population over the past 20 years, but the number of radio stations in the area during that same period has increased by 200 - 300%. The increase in competition has made it difficult to keep up with rising expenses, which, unlike the population and the advertising dollars in the market, keeps going up.

8. WBS is not alone. While it is true that radio overall has made a financial comeback since the recession of the early 90's, many small market operations (unlike their city cousins, the "mega-opolies" in the high-density population centers in the Northeast, West coast and Midwest), continue to struggle to break even.

9. The difference in income potential between the urban radio station and the small market rural station is enormous. A regulatory fee of $1,750 for a Class B or C FM station in the top 50 markets represents an minute fraction of its annual revenues. For a station such as KWEY-FM, that same fee can represent a significant budget item which could make the difference between breaking even and losing money.

10. In response to Commission requests for other mechanisms to apportion regulatory fees amongst radio stations according to market size, two major plans were considered: the Montana Plan, based on Radio Market size (similar to the system in place for Television) and the NAB Plan which was based upon actual population served by the particular station. Both had merit, but both were rejected by the Commission for workability problems. Of the two plans, the easiest to implement is the Montana Plan. Reliance on industry-imposed designations of

radio market size is certainly a fair way to reflect relative size of radio markets based upon population density. The fact that some stations on the fringe may be place inside or outside the boundary line and thus work an inequity in the particular case is no reason to reject the plan. Any division point will be arbitrary, and those stations falling just inside or outside may be the recipients of a b\financial benefit or penalty. If undue hardship results in a particular case, such cases can be handled by Office of the Managing Director, as they are now. So long as the guidelines for waiver or reduction in payment are clear, the system will work to eliminate the few cases of extreme hardship.

11. Nor is it a legitimate objection to observe that the Arbitron Radio Market does not always equate to the actual signal coverage (as in the NAB Plan). The fact of the matter is that both the amount of advertising revenues and the potential for earnings is far greater in an urbanized market than in a rural one, even if a station's signal does not cover all of that market. The Montana Plan did not abandon the system of apportioning fee amount by class of station (thus taking into account signal coverage), it simply amplified it to include another, and far more significant criteria, *market size.*

12. Some might oppose the NAB plan because of the uncertainty and increased regulatory cost on determining actual population served, particularly when population numbers continue to be based on 1990 Census data. Again, WBS would point out that there are mechanisms already in place that can address undue hardships, and the Commission has an obligation, under *WAIT Radio,* to take a "hard look" at all waiver requests.

13. In the final analysis, either the Montana Plan or the NAB Plan is better and more equitable than what is being proposed by the Commission. The Commission has an obligation, having expressed concern over the inequities of the

present system, and soliciting comments as to implementation thereof, not to reject such plans out of hand for minor technical reasons. Both plans are workable and are far superior to what is being proposed.

14. In summary, WBS respectfully submits that, for the Commission to adhere to the present plan which takes no account of market size, is to impose an unfair, inequitable, and *confiscatory* tax on small market radio broadcasters–a group that, as a rule, is far more dedicated and responsive to the needs and interests of their local communities.

Conclusion

WHEREFORE, the above premises considered, WBS respectfully urges the Commission to adopt a regulatory fee schedule that is both commensurate with the *actual* increase in the cost of regulation of radio broadcasting, and *equitable*, with respect to the ability to pay and regulatory benefits received, in the form of market size. WBS urges the Commission to reduce the overall increase for radio broadcasting across-the-board, and to implement a fee system that takes market size into account.

Respectfully submitted,

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